Daljinder Singh v Amardeep Singh a/l Daljinder Singh (as the administrator of the estate of the late Prasan Kaur a/p Santokh Singh) (Sharandeep Singh a/l Daljinder Singh, intervener)

HIGH COURT (KOTA KINABALU) — PETITION NO LBN-31NCvC-9/10 OF 2016
LEONARD SHIM JC
3 AUGUST 2021

Succession — Appointment — Removal of administrator — Applicant and intervener filed applications pursuant to ss 89 and 90 of the Probate and Administration Ordinance (Cap 109 of Sabah) ('the Ordinance') — Whether foreigner could be appointed as administrator — Whether applicant could be appointed as administrator pursuant to s 24(1) of the Ordinance — Whether respondent's application for extension of time to complete distribution process should be allowed — Whether applicant had demonstrated sufficient cause under s 89 of the Ordinance — Probate and Administration Ordinance (Sabah Cap 109) ss 24(1), 89 & 90

These were applications by the applicant ('encl 37') and the intervener ('encl 66') pursuant to ss 89 and 90 of the Probate and Administration Ordinance (Cap 109 of Sabah) ('the Ordinance') to replace the respondent as the administrator of the estate of the late Mdm Prasan Kaur a/p Santokh Singh ('the deceased'). The applicant was the husband of the deceased whereas the respondent was their son. The respondent and the intervener were siblings. The applicant argued that the respondent had failed to carry out his duties diligently and faithfully based on the following grounds: (a) the respondent obtained the grant of letter of administration dated 18 November 2016 but had failed to carry out his duties as the administrator in accordance with the Ordinance; (b) despite the court order dated 5 November 2019 compelling the respondent to complete the distribution of the assets within six months, the respondent has failed to comply with the said court order; and (c) there were multiple transactions showing self-dealings where the respondent had benefited from the estate personally, a gross violation of his duties as a faithful administrator to the estate. On the other hand, the respondent and the intervener contended that the applicant should not be appointed as the administrator because he was a foreigner (Indian national) residing in Brunei. The respondent further applied for extension of time to complete the distribution process.

Held, allowing encl 37 and dismissing encl 66 with no order as to costs:

(1) It was undisputed that there was no provision in the Ordinance that prohibited a foreigner from being appointed as an administrator of a deceased's estate. In the present case, the applicant was the husband and a beneficiary who was entitled to part of the deceased's estate, as such, he may be granted administration of the estate pursuant to s 24(1) of the Ordinance. The applicant was not a minor and there was no evidence to show that the applicant was mentally disordered. Further, the applicant was based in neighbouring Brunei which was located within driving distance from Sabah. The initial gathering of information on the deceased's estate had been carried out and the remaining statutory duties of the administrator involving transfer of land and other estate properties could be performed by advocates and solicitors appointed by the applicant and need not be personally carried out by the applicant himself. The fact that the applicant was a foreigner per se did not disentitle or disqualify the applicant from being appointed as administrator of his late wife's estate under the Ordinance. Therefore, the court held that the applicant was a more appropriate person to act as an administrator of his late wife's estate and distribute the estate properties or assets to the lawful beneficiaries (see paras 79 & 81–85).

(2) As of the date of the court's decision on 3 August 2021, the respondent still failed to complete the distribution process, as such, the respondent's application for extension of time until 5 June 2021 had been superseded by events and effluxion of time and could not be allowed (see para 93).

(3) From the affidavit evidence, the failure to comply with the court order dated 5 November 2019 and the long delay in completing the distribution of the assets of the deceased's estate including the unauthorised transactions showing self-dealings or conflict of interest by the respondent as administrator was not in the welfare and interests of the beneficiaries of the said estate. On the other hand, the applicant had shown that he was genuinely concerned regarding the slow and lack of progress by the respondent in the distribution and he was prepared and willing to be appointed as administrator (without asking for any monthly salary) to distribute the assets of his late wife's estate to the beneficiaries. Hence, the court found that the applicant had demonstrated sufficient cause for the court to exercise its powers under s 89 of the Ordinance to appoint the applicant as the administrator of the estate of his late wife replacing his son, the respondent (see paras 92 & 94–95).

[Bahasa Malaysia summary

Ini adalah permohonan oleh pemohon ('lampiran 37') dan pencelah ('lampiran 66') menurut ss 89 dan 90 Ordinan Probet dan Pentadbiran (Bab 109 Sabah) ('Ordinan') untuk menggantikan responden sebagai pentadbir harta pusaka mendiang Mdm Prasan Kaur a/p Santokh Singh ('si mati'). Pemohon merupakan suami kepada si mati manakala responden adalah anak

A mereka. Responden dan pencelah adalah adik beradik. Pemohon berhujah bahawa responden telah gagal menjalankan tugasnya dengan tekun dan setia berdasarkan alasan-alasan berikut: (a) responden telah memperolehi surat kuasa mentadbir bertarikh 18 November 2016 tetapi telah gagal menjalankan tugasnya sebagai pentadbir berdasarkan Ordinan tersebut; (b) walaupun
B perintah mahkamah bertarikh 5 November 2019 memaksa responden menyelesaikan pengagihan aset dalam tempoh enam bulan, responden telah gagal mematuhi perintah mahkamah tersebut; dan (c) terdapat beberapa urus niaga yang menunjukkan urus niaga untuk kepentingan diri di mana
C responden telah mendapat manfaat daripada harta pusaka secara peribadi, satu pelanggaran yang serius ke atas kewajipannya sebagai pentadbir harta pusaka yang setia. Sebaliknya, responden dan pencelah berpendapat bahawa pemohon tidak sepatutnya dilantik sebagai pentadbir kerana dia adalah warga asing (warga negara India) yang menetap di Brunei. Responden seterusnya
D memohon lanjutan masa untuk menyelesaikan proses pengagihan.

Diputuskan, membenarkan lampiran 37 dan menolak lampiran 66 tanpa perintah berkenaan kos:

E (1) Tidak dinafikan bahawa tiada peruntukan dalam Ordinan yang melarang warga asing dilantik sebagai pentadbir harta pusaka si mati. Dalam kes ini, pemohon ialah suami dan seorang waris yang berhak mendapat sebahagian daripada harta pusaka si mati, oleh itu, dia boleh diberikan pentadbiran harta pusaka tersebut menurut s 24(1) Ordinan.
F Pemohon bukanlah kanak-kanak di bawah umur dan tiada keterangan menunjukkan pemohon mengalami gangguan mental. Tambahan pula, pemohon berpangkalan di negara jiran Brunei yang terletak dalam jarak memandu dari Sabah. Pengumpulan awal maklumat mengenai harta pusaka si mati telah dijalankan dan baki tugas berkanun pentadbir yang
G melibatkan pemindahan tanah dan harta pusaka lain boleh dilakukan oleh peguam bela dan peguam cara yang dilantik oleh pemohon dan tidak perlu dilaksanakan sendiri oleh pemohon. Hakikat bahawa pemohon adalah warga asing semata-mata tidak menafikan hak atau menyebabkan pemohon hilang kelayakan daripada dilantik sebagai
H pentadbir harta pusaka arwah isterinya di bawah Ordinan tersebut. Oleh itu, mahkamah memutuskan bahawa pemohon adalah orang yang lebih sesuai untuk bertindak sebagai pentadbir harta pusaka arwah isterinya dan mengagihkan harta atau aset harta pusaka kepada waris-waris yang sah (lihat perenggan 79 & 81–85).

I (2) Sehingga tarikh keputusan mahkamah pada 3 Ogos 2021, responden masih gagal menyelesaikan proses pengagihan, oleh itu, permohonan responden untuk lanjutan masa sehingga 5 Jun 2021 telah digantikan oleh peristiwa dan penamatan masa dan tidak boleh dibenarkan (lihat perenggan 93).

(3) Daripada keterangan afidavit, kegagalan mematuhi perintah mahkamah bertarikh 5 November 2019 dan kelewatan yang lama dalam menyelesaikan pembahagian aset harta pusaka si mati termasuk transaksi tanpa kebenaran yang menunjukkan urus niaga untuk kepentingan diri atau konflik kepentingan oleh responden sebagai pentadbir bukanlah untuk kebajikan dan kepentingan waris-waris harta pusaka tersebut. Sebaliknya, pemohon telah menunjukkan bahawa beliau benar-benar prihatin terhadap kelewatan dan ketiadaan perkembangan pengagihan oleh responden dan beliau bersedia dan sanggup untuk dilantik sebagai pentadbir (tanpa meminta apa-apa gaji bulanan) untuk mengagihkan aset harta pusaka arwah isterinya kepada waris-waris. Oleh itu, mahkamah mendapati bahawa pemohon telah menunjukkan sebab yang mencukupi untuk mahkamah menjalankan kuasanya di bawah s 89 Ordinan untuk melantik pemohon sebagai pentadbir harta pusaka arwah isterinya menggantikan anak lelakinya, responden (lihat perenggan 92 & 94–95).]

Cases referred to

Estate of Yong Wai Man, Ex P Yong Khai Min, Re [1994] 3 MLJ 514; [1994] 4 CLJ 880, HC (refd)

Mak Chee Chong v Rockwills Trustee Bhd [2016] 10 MLJ 124; [2015] 1 LNS 1277, HC (refd)

Visaladchumy a/p Narayanan & Ors v Wakil Diri Kepada Haridas a/l Narayanan, Si Mati & Ors [2020] MLJU 907; [2020] 9 CLJ 541, CA (refd)

Legislation referred to

Probate and Administration Ordinance (Cap 109) ss 13, 24, 24(1), 89, 90, 94(3), 101(1), (1)(a), (3)

Ryan Soo (RYCO Law Firm) for the applicant.
Ashraaf Danial bin Zakaria (Safrin Saleh & Co) for the respondent.
Korventt Wheezar (Korventt & Song) for the intervener.

Leonard Shim JC:

[1] There are two applications made under ss 89 and 90 of the Probate and Administration Ordinance (Cap 109 of Sabah) before this court to replace the respondent as the administrator of the estate of the late Mdm Prasan Kaur a/l Santokh Singh (the deceased). notice of motion dated 2 July 2020 (encl 37) is filed by the applicant and notice of motion dated 6 November 2020 (encl 66) is filed by the intervener. As both applications are intertwined, this court directed both applications to be heard together at the same hearing. On 3 August 2021, after hearing submissions from both parties, this court allowed encl 37 and disallowed encl 66 with no order as to costs. I now give my grounds of decision for encls 37 and 66 respectively.

[2] Enclosure 37 is an application by the applicant for the following orders:

(a) the respondent be suspended, removed and discharged as the administrator of the estate of the deceased;

(b) the respondent be ordered to deliver up all cash, access, chattels, items, properties and documents in connection with the estate of the deceased within two weeks of this order to the applicant's solicitors; and

(c) the administration of all the chattels, movable and immovable properties which by law devolves to and vests in the personal representative of the late Prasan Kaur a/p Santokh Singh be granted to Daljinder Singh as the Administrator of the said intestate; and

(d) any further relief that this honourable court deems fit.

[3] Enclosure 66 is an application by the intervener for the following orders:

(a) that the respondent be suspended, removed and discharged as the administrator of the estate of the deceased;

(b) that the intervener be appointed as administrator of the estate of the deceased in place of the respondent;

(c) that the respondent be ordered to deliver up all cash, access, chattels, items, properties and documents in connection with the estate of the deceased within two weeks of this order to the intervener's solicitors;

(d) the administration of all the chattels, movable and immovable properties which by law devolves to and vests in the personal representative of the late Prasan Kaur a/p Santokh Singh be granted to Sharandeep Singh a/l Daljinder Singh as the Administrator of the said intestate; and

(e) any further relief that this honourable court deems fit.

CONTENTION OF THE PARTIES

[4] The application under notice of motion (encl 37) is essentially for the applicant (the husband) to be appointed as administrator of the estate of his late wife, Mdm Prasan Kaur a/p Santokh Singh, replacing his son Amardeep Singh (the respondent). The respondent and the intervener are siblings. These are the main grounds which the applicant contends would show conclusively that the respondent had failed to carry out his duties diligently and faithfully:

(a) the respondent obtained the grant of letter of administration dated 18 November 2016 but had failed to carry out his duties as the administrator in accordance with the Probate and Administration Ordinance;

(b) despite the court order dated 5 November 2019 compelling the respondent to complete the distribution of the assets within six months, the respondent has failed to comply with the said court order; and

(c) there are multiple transactions showing self-dealings where the applicant had benefited from the estate personally, a gross violation of his duties as a faithful administrator to the estate.

[5] Another beneficiary, Ms Amandeep Kaur a/p Daljinder Singh who is the daughter of the applicant and sister of the respondent and the intervener has filed an affidavit (encl 42) in further support of this notice of motion (encl 37).

THE RESPONDENT HAS FAILED IN HIS DUTIES AS ADMINISTRATOR

[6] It is undisputed that the respondent has applied for and obtained the grant of letter of administration on 18 November 2016 (encl 12). For ease of reference, the grant of letter of administration dated 18 November 2016 (encl 12) is attached herein and marked as 'Annexure A'.

[7] Pursuant to Chapter IX of the Probate and Administration Ordinance, the respondent must comply with his statutory duties as the administrator. For reasons as will be submitted by the applicant below, the respondent had failed to faithfully and diligently carry out his duties as the administrator of the deceased's estate.

[8] Section 101(1) of the Probate and Administration Ordinance provides as follows:

101(1) An executor or administrator shall —

(a) *within six months from the grant of probate or letters of administration* or within such further time as the Court which granted the probate or letters may from time to time appoint, *exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the creditors, and also all the debts owing by any person to which the executor or administrator is entitled in that character;* and

(b) in like manner *within one year from the grant,* or within such further time as the said Court may from time to time appoint, *exhibit an account of the estate, shewing the assets which have come to his hands and the manner in which they have been applied or disposed of.*

...

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, *intentionally omits to comply* with the

requisition, he shall be *deemed to have committed an offence under* s 176 of the Penal Code.

(4) The *exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under* section 193 of the Penal Code.

[9] By law, the respondent ought to have filed the inventory within six months, ie on or before 17 May 2017 and the accounts within one year, ie on or before 17 November 2017. For reasons best known to him, he had refused or failed to do so. It must be noted that the failure to do so constitute a criminal offence under s 101(3) of the Probate and Administration Ordinance.

[10] The applicant had to apply to the court vide the notice of motion dated 8 April 2019 to compel the respondent to carry out his statutory duties (encl 19). On 05 November 2019, this court granted an order under encl 33 as follows:

(a) that the respondent do within two weeks from the date of this order exhibit in court and forward a copy to the applicant an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to the estate of the deceased pursuant to s 101(1)(a) of the Probate and Administration Ordinance (Sabah Cap 109) ('the Ordinance');

(b) that the respondent do within two weeks from the date of this order exhibit in court and forward a copy to the applicant an account of the estate, showing the assets which have come to the respondent's hands and the manner in which they have been applied or disposed of pursuant to s 101(1)(b) of the Ordinance; and

(c) that the respondent do within six months from the date of this order distribute all the assets contained in the Schedule Annexed to the grant of letter of administration dated 18 November 2016.

[11] It was the applicant's contention that only after the respondent was compelled to do so did he finally file encl 34 purportedly showing a schedule of assets and statement of account. However, such document do not explain or account for much. In exh AS1 of encl 34, the respondent had completely failed to explain or account for the monies in Public Bank Bhd account No 316210057 belonging to the deceased.

[12] In exh AS2 of encl 34, the applicant contends that the respondent had completely failed to explain or account for inter alia the following items:

(a) payments from/to Amardeep Singh, Sharandeep Singh and Novedeep Singh amounting to RM55,133.94 in year 2015, RM180,320.45 in year 2016; RM308,630.09 in year 2017; and RM487,159.51 in year 2018;

(b) annual accumulated losses;

(c) professional fees especially in years 2016 and 2017; and

(d) administrator's salary of RM60,000 per year since 2015.

[13] Most worryingly, the applicant contends that the respondent as the administrator seems to have transacted with himself substantial amounts in the sum of RM279,142.89. Meanwhile, the respondent as the administrator also transacted with Sharandeep Singh and Novedeep Singh in the sum of RM752,102.10. The applicant contends that this was done without the knowledge and to the exclusion of other beneficiaries, the applicant and Amandeep Kaur a/p Daljinder Singh.

[14] Furthermore, the applicant contends that the respondent had unlawfully awarded himself a salary of RM60,000 a year. The applicant contends that the respondent had not obtained any leave from the court to award himself a salary of RM5,000 per month just for the administration. Such salary payment is unlawful and can only be deemed as a misappropriation of the estate funds.

[15] By way of the letters dated 20 January 2020 and 06 April 2020, letters were written to the respondent to object to such self-dealings and seeking explanations. Yet, the respondent did not provide any explanation or retraction whatsoever. The only response was by a letter dated 14 May 2020 merely asking for extension of time to distribute.

[16] Despite being the co-owner in some of the immovable properties listed in the Schedule Annexed to the letter of administration, the respondent had not contacted the applicant to assist with the transfer of the said properties.

[17] Despite being a beneficiary in the estate, the respondent had not contacted the applicant to sign any document of transfer for the said properties.

[18] The respondent claims that he had contacted the applicant about the distribution. The applicant denies the same and sought proof. No such evidence is proffered by the respondent.

[19] The respondent also belatedly included exhs AS13 and AS14 in encl 45 and exhs AS15 and AS16 in encl 50 purportedly claiming that there was a potential purchaser. With respect, the applicant submits that such exhibits are highly suspicious and even at best, non-conclusive and non-binding. The applicant contends that the strongest indication that the letters of intention to purchase are not genuine is that the respondent did not even tell or ask the

A applicant about the sale. It is reminded that the applicant is a direct co-owner of the Lazenda Properties. How could the respondent claim to have sold the properties without even consulting the registered owner? Further, months have passed since the said letters and yet, no progress is made.

B **[20]** The considered view of the applicant is that the purported letters of intention amounts to naught.

[21] Respectfully, the applicant contends that the respondent as well as the intervener have no understanding whatsoever as to the processes of C administration. Beyond the initial collection of information, the rest of the administration and distribution stages are mainly legal processes. This can be performed by the applicant through his solicitors regardless of where the applicant is.

D

[22] Instead of distributing the estate in accordance with the law, the applicant submitted that the respondent (with the assistance of the intervener) sought to sell the assets without the consent of the beneficiaries and without getting a court order, which is a prerequisite. This shows that the respondent E and the intervener has little or no understanding as to the duties, obligations and responsibilities as an administrator.

[23] Finally, as alluded by the applicant above, further delays could be severely prejudicial to the estate and the beneficiaries. The respondent had been F taking a salary of RM5,000 a month or RM60,000 a year unlawfully from the estate. This can be seen in the additional affidavit by the respondent in encl 34. The applicant contends that he had objected vehemently to the unlawful provision of salary by way of a letter dated 20 January 2020 but the respondent did not respond at all.

G

[24] The applicant contends that as the respondent continues to fail in his duties as administrator (with the assistance of the intervener), he had been unlawfully taking a salary of RM5,000 a month. As such, any further delay in this matter would be severely prejudicial against the deceased's estate and the H beneficiaries

THE RESPONDENT'S READINESS AS ADMINISTRATOR

[25] In view of the respondent's tardiness and lack of progress, the applicant I has shown his willingness to take on the responsibilities as the administrator and to complete the whole process in a timely and diligent manner.

[26] As can be seen in the cause papers, the applicant had time and again chased followed up with the respondent on the progress of the administration,

culminating to the filing of a notice of motion in encl 19.

[27] The applicant submits that he is a better candidate as the administrator as he is also the joint owner of several of the properties in the estate. It would therefore be expedient to allow the applicant to be the administrator of the estate.

[28] For the reasons above, the applicant respectfully prays for the application under encl 37 to be allowed with costs against the respondent.

[29] The respondent contends that the late Prasan Kaur a/p Santokh Singh ('deceased') passed away on 10 October 2015 intestate. The deceased had passed away leaving behind her lawful husband, Daljinder Singh ('applicant') and four lawful children, who are all beneficiaries of the deceased's estate.

[30] The respondent and his three siblings are lawful children of the deceased who are as follows:

(a) Amandeep Kaur a/p Daljinder Singh (NRIC No: 820916–08–6261) ('Amandeep');

(b) Sharandeep Singh a/l Daljinder Singh (NRIC No: 860916–38–5087) ('Sharandeep'); and

(c) Novedeep Singh a/l Daljinder Singh (NRIC No: 920920–08–6655) ('Novedeep').

[31] By way of a grant of letters of administration ('letters of administration') dated 18 November 2016, the respondent was duly appointed by this court as the administrator of the deceased's estate. As the administrator of the deceased's estate, the respondent was responsible to amongst others, administer and distribute the deceased's movable and immovable assets.

[32] On 5 November 2019, this court has, among others, ordered the respondent to distribute all assets contained in the Schedule Annexed to the grant of letters of administration within six months from the date of the order.

[33] By a letter dated 20 January 2020 followed up with another letter dated 6 April 2020, the applicant had written through his appointed solicitors, Messrs Ryco Law Firm, as to the status of the distribution of the deceased's assets. A reply letter was sent by the respondent on 14 May 2020, which the respondent humbly requested for an extension of time to further distribute all the assets of the deceased.

[34] In the reply letter, the respondent also mentioned that his previous

A solicitors had ceased to represent him in this matter and he was having difficulties in appointing a new solicitor to take over this matter.

[35] The respondent contend that he had also mentioned that the distribution process is currently at a slow pace as he has incurred a huge sum of funds to defend himself as the administrator of the estate of the deceased in another civil suit in regards of the tenancy of the estate of the property known as LBN-B25NCvC-11/12 of 2018 filed, apart from the suit herein in respect of the notice of motion to remove the respondent as the administrator by the applicant.

[36] Further, the respondent contends that current economic climate and the effect from the Movement Control Order ('MCO') imposed by the government of Malaysia had greatly affected the financial standings of the estate for having to bear the legal expenses from the civil suits as well as handling the distribution of estate of the deceased.

[37] On 2 July 2020, pursuant to encl 37, the applicant sought to remove the respondent as the administrator and to replace the respondent himself as the administrator allegedly based on the fact that the respondent has failed to discharge his duties as the administrator since obtaining the letters of administration.

REMOVAL OF THE RESPONDENT AS AN ADMINISTRATOR

[38] It is the submission of the respondent that the applicant in his notice of motion (encl 37) that the applicant is seeking for a consequential order being a revocation of the letters of administration granted to the respondent due to his failure to comply with the order dated 5 November 2019 (encl 33).

[39] The respondent respectfully submits that in order for there to be a removal of an administrator, it is the onus of the applicant to prove the following:

(a) that the person is entitled to remove the administrator;

(b) that there is sufficient cause to remove the administrator; and

(c) the burden to prove that removal is necessary.

[40] Further, the respondent contends that it is important to highlight that the applicant here is neither a Malaysian nor a resident of the colony in Sabah and/or Labuan. The applicant is currently residing in Brunei.

[41] The respondent respectfully refers to the case of *Mak Chee Chong v*

Rockwills Trustee Bhd [2016] 10 MLJ 124; [2015] 1 LNS 1277, in which Ravinthran a/l Paramaguru J (as he was then) held, inter alia, as follows:

> Therefore if the executor is resident outside the colony, it becomes a ground to remove him as executor.

[42] The respondent submits that it would be inappropriate for the applicant as an Indian national to be appointed as the administrator of the estate for the reason that he, being a non-citizen of Malaysia will undoubtedly pose a difficulty in the various process of transferring properties under his name and distributing it accordingly thereafter to the beneficiaries.

[43] To add, the current COVID-19 pandemic would also contribute and further add to the difficulties of administering the estate in which the applicant's movement and travel will be restricted. Hence, further delaying and complicating the distribution process.

[44] The respondent further submit that in order for the applicant's notice of motion to be granted, he must show 'sufficient cause' to do so.

[45] Referring to the *Rockwills* case, the learned High Court judge held as below:

> 'Sufficient cause' is not defined in Probate and Administration Ordinance (Cap 90 of the Laws of Sabah). Section 34 of the Probate and Administration Act 1959 (revised 1972) which applies in Peninsular Malaysia reads as follows:
>
> > Any probate or letters of administration may be revoked or amended for any sufficient cause.
>
> Sufficient cause is not defined in this legislation as well. In *Guindarajoo a/l Vegadason v Satgunasingam a/l Balasingam* [2010] 4 MLJ 842; [2010] 6 CLJ 954, the meaning of 'sufficient cause' was addressed as follows in paragraphs 25 and 26:
>
> > [25] And what is sufficient cause? The Court of Appeal in *Damayanti Kantilal Doshi & Ors v Jigarlal Kantilal Doshi & Ors* [1998] 4 MLJ 268; [1998] 4 CLJ 81 applied the test in the Federal Court case of *Re: Khoo Boo Gong, Deed Khoo Teng Seong v Teoh Chooi Ghim & Ors* [1981] 2 MLJ 68; [1981] 1 LNS 78 and held (at the headnotes):
> >
> > > Section 34 of the Act empowers the court to interfere if 'sufficient cause' is not defined but the courts have always considered the welfare and interests of the beneficiaries of an estate as the paramount critetion in deciding whether or not there is sufficient cause to interfere. This is strictly an objective test.
> >
> > [26] On the same question of 'sufficient cause', Abdul Hamid Embong J (as he then was) in *Ligar Fernandes v Eric Claude Cooke* [2002] 5 MLJ 177; [2002] 6 CLJ 152 accepted that 'all that is needed is for the plaintiff to adduce sufficient evidence to raise a strong suspicion of the defendant's inaction, want of diligence and honesty,

A or a conflict of interest situation or inability to act to invoke the court's jurisdiction under s 34 of the Probate and Administration Act 1959 and allow the reliefs sought.

B **[46]** The respondent further submits that the delay for the distribution was unintentional coupled with the current worldwide pandemic which has hampered the administration of the deceased's estate.

EXTENSION OF TIME

C **[47]** The respondent submits that there are indeed extraneous circumstances which justifies this application for extension of time.

D **[48]** It is the submission of the respondent that the lack of funds in the deceased estate for having to bear the legal dispute commenced by the applicant had caused the distribution to be painstakingly slow.

E **[49]** Further, the threat caused by the global pandemic COVID-19 had clearly halted all process of distribution. Due to the government's MCO, all sectors are temporarily closed causing a financial constraint to those who are effected, this including the respondent.

F **[50]** The respondent submits that he has carried out the duty of an administrator of the estate faithfully and diligently as the respondent is acting in the best interest of all the beneficiaries. Further, the respondent have not acted or done anything that would jeopardise the distribution process.

G **[51]** The respondent contends that it is not the intention of the respondent to have the distribution process halted due to all the inconveniences that occurred. How can all the blame be put onto the respondent alone when the applicant had never approached nor offered any assistance in the distribution?

H **[52]** The respondent contends that numerous times the respondent had requested the applicant's assistance in the said distribution but the applicant was uncooperative and instead had opted to simply remove the respondent from being the administrator to the deceased's estate.

I **[53]** It was contended by the respondent that, in fact, the intervener, whom is the brother of the respondent, that had genuinely assisted the respondent with the administration and distribution of the deceased's estate.

[54] With respect, the respondent would highlight that the applicant had before this failed and/or negligently administer his property with the deceased when he defaulted in the payment of the banking facilities to OCBC Bank (M)

Bhd in regards to the property known as Parcel No A-13A-16, 13A, Tower A, Suites Embassy Row, Jalan Ampang, Selangor M-Suites Property which had been jointly taken by the applicant and the deceased to finance the purchase of the same.

[55] Due to the banking facilities being defaulted, the M-Suites property was in the midst of being auctioned off. The respondent contend that it was the respondent alone whom had to recover the M-Suites property, whereby the respondent took immediate steps to secure the necessary documents from the Bank and its solicitors.

[56] Due to the circumstances above, the applicant's allegations that the respondent has not faithfully and diligently carried out his duties as the administrator of the deceased's estate does not hold water and should be dismiss by this court.

[57] In summary, the respondent submits that the reason for the delay in the said distribution are due to the followings:

(a) the whole-year long restrictions of movement implemented by the Malaysian Government to curb the widespread of COVID-19 had hampered with the administration of the estate;

(b) the changing of lawyers by the respondent for which all the cause papers and correspondences had to be forwarded back and-forth; and

(c) the cost that the respondent had to bear in managing the distribution process at the same time dealing with the unnecessary filing of legal suits by the applicant and questions the respondent's duties as the administrator.

[58] The respondent submits that whatever that had happened during the extended period, does not in any way alter the facts that the applicant is not fit to be the administrator of the deceased's estate.

[59] Further, the respondent submits that despite the respondent's misperception to dispose and/or sell of the estate's properties, it still does not change the fact that the applicant is not the entitled to replace the respondent as the administrator.

[60] In any event, the respondent submits that it is just and convenient to allow the respondent to further extend the distribution process for all the assets contained in the Schedule Annexed to the grant of letter of administration for 12 months from 5 June 2020 until 5 June 2021.

[61] Should this court is not with the respondent in this, the respondent prays for the intervener to be considered as the new administrator, replacing the respondent.

[62] In this regard, the respondent respectfully submits that the applicant's notice of motion be dismissed and the respondent's application for an extension of time be granted by this court.

[63] The intervener submitted that the respondent was appointed as administrator to the estate of Prasan Kaur a/p Santokh Singh, deceased, by virtue of the grant of letters of administration dated 18 November 2016. Pursuant to the applicant's application in encl 37, he sought to remove the respondent as the administrator and to replace the respondent with himself as the administrator allegedly based on the fact that the respondent has failed to discharge his duties as the administrator since obtaining the said letters of administration.

[64] The applicant deposed in his affidavit that the respondent had never contacted him or communicated with him for the speedy and expeditious distribution of the properties to the rightful beneficiaries. Furthermore, the applicant claimed that the respondent had failed to exhibit a detail summary of the accounts of the estate as well as the manner and method of such distribution within the statutory time limit.

[65] The applicant claimed that such failure was a breach of the provision of the Ordinance, hence his application herein.

THE LAW

[66] Section 89 of the Probate and Administration Ordinance (Cap 90 of the Laws of Sabah) provides for the removal of an administrator:

> The Court may on application made to it and on sufficient cause being shown suspend, remove or discharge any executor or administrator and provide for the succession of another person to the office of any executor or administrator so suspended removed or discharged and the vesting in such successor of any property to the estate.

[67] The intervener referred to *Mak Chee Chong v Rockwills Trustee Bhd* [2016] 10 MLJ 124; [2015] 1 LNS 1277 (see para 45 above).

[68] It is submitted by the intervener that there is no sufficient cause to justify the removal of the respondent as administrator. This is because the intervener also being a beneficiary had assisted the respondent on several occasions in his duties as administrator.

[69] However, such assistance was limited and restricted since the intervener did not have the power to make any final decision. The assistance rendered involved prospecting for potential buyers for the properties under the deceased estate. However, it was only recently that the intervener was successful in his attempt but nevertheless the transaction never materialised due to the spread of the pandemic.

[70] The intervener contends that there were also instances where the respondent had failed on several occasions to contact the applicant and the respondent had complained of the same to the intervener. The respondent was frustrated and powerless to discharge his duties as the applicant was very elusive and non-cooperative and later, stress was added on due to the fact that the applicant was the joint owner of several of the properties under the said estate and nothing could proceed because of non-communication of the applicant.

[71] Furthermore, the intervener contends that the respondent was also having difficulties maintaining the properties that are still under financing and since he is the administrator, he had to be responsible for the arrears and other expenses incurred from the said properties to the point that the respondent had to come up with the monies himself to cater for the same. On the other hand, despite being the joint-owner of several of the properties, the applicant did not even bother about such hardships or repayments. Instead, he placed the blame and claimed that the respondent failed in his duties as administrator.

[72] For the reasons above, the intervener submits that the respondent has not failed in his duties and that there is insufficient cause for this court to interfere and cause the respondent to be removed.

[73] The applicant has expressed his intentions to replace the respondent as administrator in his application. With due respect, the intervener do not think that the applicant is a suitable replacement, should the respondent be removed.

[74] The intervener contends that the applicant is not a resident of Malaysia and is an Indian national residing in Brunei. The various processes in Malaysia require the attendance of the person applying in person and that the signature of that person is required. This therefore requires the said person to be a resident of Malaysia for reasons of convenience and expeditious disposal of matters.

[75] For these reasons, it is submitted by the intervener that the applicant is not a suitable replacement since he is not residing in Malaysia. Furthermore, during these trying times where the ongoing pandemic is threatening the entire world, it is also not convenient for the applicant to travel and be in Malaysia in person to execute important documents pursuant to the distribution.

[76] Furthermore, the intervener contends that the applicant had also not done his part to facilitate the expeditious process of the distribution or assist in the repayment of the financing arrears as joint-owner of several of the properties under the estate. The applicant's non-action goes to show that he simply does not care about the matters of the estate and what more if he replaces the respondent as the administrator. The fact that the applicant is shifting the blame and pointing fingers at the respondent ultimately disclose future incompetency.

[77] As far as the duties of an administrator is concerned, the intervener contends that he had given his best to assist the respondent in any way possible. However, he is limited in his capacity as he did not have any real authority to make decisions. Therefore, whatever the applicant thought the intervener could and was supposed to do in his limited capacity, was simply wrong. In any event, the intervener will put the applicant to strict proof herein.

EVALUATION AND FINDINGS

[78] The respondent and the intervener contends that the applicant should not be appointed because he is a foreigner (Indian national) residing in Brunei and relied on *Rockwills* case (above).

[79] It is undisputed that there is no provision in the Probate and Administration Ordinance that prohibit a foreigner from being appointed as an administrator of a deceased's estate. Section 24 of the Probate and Administration Ordinance (Cap 109) of Sabah provides:

> (1) When the deceased has died intestate, administration of his estate may be granted to *any person* who, according to the rules of distribution of the estate of an intestate applicable in the case of such deceased, *would be entitled to the whole or any part of such deceased's estate*.

[80] Section 13 of the Probate and Administration Ordinance states:

> Letters of Administration cannot be granted to any person who is *a minor* or *mentally disordered*.

[81] In the present case, the applicant is the husband and a beneficiary who is entitled to part of the deceased's estate. The applicant is not a minor and there is no evidence to show that the applicant is mentally disordered. The fact that the applicant is a foreigner per se does not disentitle or disqualify the applicant from being appointed as administrator of his late wife's estate under the Probate and Administration Ordinance (Cap 109 of Sabah).

[82] Unlike the *Rockwills* case where the trustee is a corporation with its head

office in Kuala Lumpur, the applicant in the present case is based in neighbouring Brunei which is located within driving distance from Sabah and does not involve crossing the South China Sea.

[83] Further, the applicant is the father of the respondent and the intervener. The applicant is also a beneficiary and co-owner of the immovable properties of the estate of his late wife, the late Mdm Prasan Kaur a/p Santokh Singh. As the applicant entitled to part of the deceased's estate under the rules of distribution, he may be granted administration of the estate pursuant to s 24(1) of the Probate and Administration Ordinance.

[84] In any event, the initial gathering of information on the deceased's estate had been carried out and the remaining statutory duties of the administrator involving transfer of land and other estate properties could be performed by advocates and solicitors appointed by the applicant and need not be personally carried out by the applicant himself.

[85] Hence, this court finds the applicant to be a more appropriate person to act as an administrator of his late wife's estate and distribute the estate properties or assets to the lawful beneficiaries.

[86] This is not the 1st time where an application is made to court concerning replacement of the administrator due to the inordinate delay in the administration and distribution of the estate properties to the beneficiaries.

[87] In an earlier application dated 8 April 2019 (encl 19), the High Court had on 5 November 2019, inter alia, ordered the respondent to complete the distribution of the assets within six months. Despite the court order dated 5 November 2019, the respondent has failed to comply with the said court order.

[88] The affidavit averments revealed that there are multiple transactions showing self-dealings where the respondent had benefited from the estate personally which is a gross violation of his statutory duties to act as a diligent and faithful administrator of his late mother's estate.

[89] The statutory duties of an administrator is clearly enunciated in *Re Estate of Yong Wai Man, Ex P Yong Khai Min* [1994] 3 MLJ 514; [1994] 4 CLJ 880 where the High Court, Tawau (per Justice Ian Chin) stated as follows:

> ... However, this seemingly wide power is circumscribed by the duties which the following sections of the Ordinance impose upon an administrator, viz:
>
> *Chapter IX*
>
> 101 *The Duties Of An Executor Or Administrator*
>
> (1) An executor or administrator shall —

A (a) *within six months from the grant of probate or letters of administration* or within such further time as the Court which granted the probate or letters may from time to time appoint, *exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the creditors, and also all the debts owing by any person to which the executor or*
B *administrator is entitled in that character;* and

(b) in like manner *within one year from the grant*, or within such further time as the said Court may from time to time appoint*, exhibit an account of the estate, shewing the assets which have come to* his hands and the manner in which they have been applied or disposed of.

C (2) The Chief Justice may prescribe the form in which an inventory or account under this section is to be exhibited.

(3) *If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under* s 176 of the Penal
D Code.

102. The executor or *administrator shall with all reasonable expedition and diligence collect the property of the deceased and the debts due to him and shall pay all debts due by the deceased's estate* and the legacies under the will (if any), in accordance with the provisions hereinafter contained, and *shall forthwith proceed*, when there is no
E minority or other special reason to the contrary*, to hand over the residue of the estate (if any), to the person or persons entitled thereto and to make his final report to the Court setting forth the manner in which he has discharged his duties.*

103. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and
F board and lodging for one month previous to his death, are to be paid before all other debts.

104. Testamentary and administration expenses, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate are to be paid next after the funeral expenses and death-bed charges.

G 105. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, clerk or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

H By the just quoted provisions, the *administrator must from the assets of the deceased pay off his debts and in the priorities spelt out after which the administrator is to hand over the residue of the estate to the beneficiaries.* The beneficiaries in the case of an intestate are those persons stipulated by the *Intestate Succession Ordinance* (No. 1 of 1960) (Sabah), which need not detain our attention any further other than noting that the infants in this case are the beneficiaries under the said Intestate Succession
I Ordinance ...

[90] It has been nearly five years since the grant of letters of administration was issued to the respondent as the administrator of his late mother's estate. The court had on 5 November 2019 given the respondent a final chance to

complete the distribution of the assets within six months but to no avail. The undisputed affidavit evidence also shows that the intervener (Sharandeep Singh) had been working with and/or assisting the respondent all this while in the administration and/or distribution of their late mother's estate but the stalemate remained without any real progress in the distribution of the estate properties. The respondent contends that there is a potential buyer for the estate properties known as the Lazenda Properties but there is no evidence to show that the respondent had even told or discussed with the applicant on the purported sale or the best possible price to be obtained even though the applicant is a co-owner of the Lazenda Properties. Neither did the respondent obtained the consent of the beneficiaries nor apply to the court for the purported sale to be approved which is a prerequisite under s 94(3) of the Probate and Administration Ordinance. In *Visaladchumy a/p Narayanan & Ors v Wakil Diri Kepada Haridas a/l Narayanan, Si Mati & Ors* [2020] MLJU 907; [2020] 9 CLJ 541, the Court of Appeal held:

> (2) The first defendant, as the *administrator of the estate, owed fiduciary duties to the plaintiffs.* His duties included the duties to (i) *protect the rights and interests of the beneficiaries at all material times*; (ii) *act with proper prudence when dealing with the estate property*; (iii) *obtain the best possible price for the assets of the estate that are being sold*; and (iv) *to distribute the proceeds of the estate property among the beneficiaries* ...

[91] Although the respondent attributed the delay or failure to distribute the estate properties to the Covid-19 pandemic and the Movement Control Order (MCO), it is not disputed that the passing of the late Mdm Prasan Kaur in 2015 and the grant of letters of administration to the respondent as administrator in 2016 took place long before the Covid-19 pandemic and imposition of the MCO in March, 2020. Hence, the Covid-19 pandemic did not hinder or adversely affect the distribution of the estate properties in any significant manner.

[92] From the affidavit evidence, the failure to comply with the court order dated 5 November 2019 and the long delay in completing the distribution of the assets of the deceased's estate including the unauthorised transactions showing self-dealings or conflict of interest by the respondent as administrator in the administration of the deceased's estate is in my judgment, not in the welfare and interests of the beneficiaries of the said estate.

[93] The respondent had requested for an extension of time of another 12 months from 5 June 2020 until 5 June 2021 to complete the distribution process. However, until the date of this decision on 3 August 2021, the respondent still fail or refuses to carry out his statutory duties to complete the distribution or to comply with the order of the court dated 5 November 2019. As the respondent has not completed the distribution within the extended deadline of 5 June 2021 sought by the respondent, this court finds that the

respondent's request for an extension of time until 5 June 2021 has been superseded by events and effluxion of time and could not be allowed.

[94] The applicant has shown that he is genuinely concerned regarding the slow and lack of progress by the respondent in the distribution and he is prepared and willing to be appointed as administrator (without asking for any monthly salary) to distribute the assets of his late wife's estate to the beneficiaries.

[95] Hence, this court finds that the applicant has demonstrated sufficient cause for the court to exercise its powers under s 89 of the Probate and Administration Ordinance to appoint the applicant as administrator of the estate of his late wife replacing his son, Amardeep Singh (the respondent).

[96] In *Rockwills Trustee Bhd*'s case cited by the respondent and the intervener (above), the delay in obtaining probate of the deceased's will was about a year since the death of the deceased due to disagreement on the fees of the trustees. The High Court was satisfied that the applicant who is the lawful husband of the deceased and the father of the two beneficiaries had demonstrated 'sufficient cause' under s 89 of the Probate and Administration Ordinance (Cap 109 of Sabah) and allowed the application.

[97] In the present case, the delay of about five years in completing the distribution of the estate after the grant of letters of administration is very much longer than in *Rockwill* case. Hence, *Rockwills* case does not assist the respondent and the intervener's case but lends considerable credence and support to the application by the applicant (who is the husband and beneficiary of the late Mdm Prasan Kaur and father of the four children/beneficiaries) to be appointed as the administrator of his late wife's estate.

[98] Based on the aforesaid reasons, encl 37 is allowed and encl 66 is dismissed. As this estate matter involves disagreement by the members of the same family over the appointment and/or replacement of administrator of the deceased's estate, I make no order as to the costs of encls 37 and 66.

Enclosure 37 allowed and encl 66 dismissed with no order as to costs.

Reported by Dzulqarnain bin Ab Fatar